

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA**

NORTHERN DIVISION

CYNTHIA ELLISON,

Plaintiff

V.

**AUBURN UNIVERSITY
MONTGOMERY,**

Defendant

Civil Action No.
2:05CV902-B

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO AMEND ANSWER**

The eleventh amendment provides that “the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend XI. This prohibition of jurisdiction also precludes suits when a citizen brings suit against her own state, state agents, or state instrumentalities in federal court. *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 267-68 (1997); *Regents of Univ. of California v. Doe*, 519 U.S. 425, 429 (1997).

Auburn University Montgomery has neither waived its immunity by consenting to suit, nor had its sovereign immunity abrogated by Congress. Thus,

AUM is entitled to assert sovereign immunity, and the Court should grant its motion to assert this defense via amendment to its answer.

AUBURN UNIVERSITY MONTGOMERY

s/Burton F. Dodd

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ORDER

This case is before the Court on Defendant’s motion to amend its answer to assert immunity from suit under 42 U.S.C. § 1981 by virtue of the eleventh amendment to the Constitution.

The Court finds that the amendment is proper and ORDERS that Defendant is granted leave to amend its answer. Defendant shall file its amended answer within ten days of the date of this Order.

Entered this _____ day of March, 2006.

United States District Judge